

STATE OF MICHIGAN
COURT OF APPEALS

DONNA JEAN HORAK,

Plaintiff-Appellant,

v

RICK J. GOODWIN,

Defendant-Appellee.

UNPUBLISHED

June 16, 2000

No. 212685

St. Clair Circuit Court

LC No. 97-000504-NZ

Before: O’Connell, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant’s motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). Plaintiff and defendant lived together for about thirteen years and had two children together, but they never married. After their relationship ended, plaintiff brought this action, seeking a one-half interest in the property where they had lived together, as well as exemplary damages. Plaintiff’s complaint contained counts for fraud, breach of contract, equitable mortgage, and assault and battery. The trial court granted defendant’s motion for summary disposition. We affirm.

Neither the trial court’s order granting defendant’s motion nor the court’s written opinion specify exactly which subrule was relied on in granting defendant’s motion. However, the trial court stated that it considered not only the pleadings, but also testimony from depositions. Only the pleadings may be considered when determining whether to grant summary disposition under MCR 2.116(C)(8). *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); MCR 2.116(G)(5). In deciding a motion under MCR 2.116(C)(10), however, the trial court considers all the documentary evidence in the light most favorable to the nonmoving party, and the court may grant summary disposition where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). On appeal, our review is de novo. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Because

the trial court considered documentary evidence, we will review the court's decision as though it were granted under MCR 2.116(C)(10).¹

Initially, we note that the argument contained in plaintiff's brief on appeal does not conform to her statement of questions presented. In the statement of questions presented, plaintiff raises issues claiming that the trial court improperly viewed the facts in a light favoring the moving party, that the trial court improperly considered facts in a motion for summary disposition under MCR 2.116(C)(8), and that the trial court failed to allow her to amend her complaint. However, the only arguments presented in plaintiff's brief relate to the first issue, the claim that summary disposition was inappropriate under MCR 2.116(C)(10). Therefore, any other issues are considered abandoned because they are not adequately argued. *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 718; 591 NW2d 676 (1998).

Plaintiff first argues that there remained a genuine issue of material fact with respect to her claims for fraud and breach of contract. However, plaintiff only cites cases stating the standards under which a trial court may grant summary disposition under MCR 2.116(C)(10). Plaintiff presents no argument applying those standards to her case. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *FMB-First Michigan Bank*, *supra* at 717.

Plaintiff next argues that the trial court improperly considered the facts in a light most favorable to defendant, the moving party. To support her argument, plaintiff recites twelve factual statements from the trial court's written opinion that plaintiff claims are not supported by the record. However, many of these alleged discrepancies would not rise to the level of a genuine issue of *material* fact. For example, plaintiff complains that the trial court incorrectly stated that the parties moved to the property in 1984, when they actually moved there in 1983. This discrepancy does not affect the analysis whether plaintiff presented genuine issues of material fact to support her claims of fraud and breach of contract.

Plaintiff disputes the trial court's statement that she was aware that she was not included on the title to the property. However, in her deposition, plaintiff testified that she saw the land contract when it was first executed and that it was only in defendant's name. She also testified that she knew that defendant was the owner of the property. Although the complaint stated that plaintiff had only learned recently that the property was not in her name, the unequivocal testimony from her deposition is binding, even though it contradicts allegations in the complaint. *Henderson v Sprout Bros, Inc*, 176 Mich App 661, 670; 440 NW2d 629 (1989). Plaintiff also submitted an affidavit stating that defendant lead her to believe the property also belonged to her. However, "[i]t is well settled that a party may not raise an issue of fact by submitting an affidavit that contradicts the party's prior clear and unequivocal testimony." *Palazzola v Karmazin Products Corp*, 223 Mich App 141, 155; 565 NW2d 868 (1997). Plaintiff's own deposition testimony unequivocally demonstrated that she knew the property

¹ Plaintiff's claim for assault and battery was dismissed under MCR 2.116(C)(7) because it was barred by the statute of limitations. Plaintiff does not appeal the dismissal of this claim.

did not belong to her. Indeed, after their relationship ended, plaintiff entered into a lease agreement with defendant to lease the property from him.

Plaintiff's claim for fraud seems to be premised on defendant's representations to her that the home would someday belong to her. An action for fraud must be based on a misrepresentation of a past or existing fact—future promises are contractual in nature and do not provide a basis for actionable fraud. *Eerdmans v Maki*, 226 Mich App 360, 366; 573 NW2d 329 (1997). Plaintiff failed to present a genuine issue of material fact that defendant misrepresented a past or existing fact, and summary disposition on this claim was therefore appropriate.

As to plaintiff's claim for breach of contract, summary disposition was also appropriate. Generally, "[t]hose engaged in meretricious relationships do not enjoy property rights afforded a legally married couple." *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997). However, express agreements based on independent consideration may be enforced. *Id.* In this case, plaintiff failed to present evidence of an express agreement to share ownership of the property, outside of defendant's promise to marry her in the future and thus share property accumulated by joint efforts. See *Carnes v Sheldon*, 109 Mich App 204, 209; 311 NW2d 747 (1981). Cf. *Hierholzer v Sardy*, 128 Mich App 259, 261; 340 NW2d 91 (1983) (where an express agreement existed, whereby the defendant promised to give the plaintiff property in exchange for her employment services). Plaintiff also did not present evidence of consideration independent of household services and contributing her income to household expenses, including the land contract payment. See *Carnes*, *supra* at 207-208. Again, plaintiff's claim is predicated on defendant's failure to fulfill his promise to marry her. To grant relief for breach of contract in this case "essentially would resurrect the old common-law marriage doctrine which was specifically abolished by the Legislature." *Id.* at 216.

Plaintiff next argues that the trial court erred in dismissing her claim for equitable mortgage. However, plaintiff cites no authority to support an equitable mortgage under these circumstances. Therefore, she has failed to properly present her claim to this Court for review. *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998). Moreover, "[i]n the absence of a written contract, an equitable lien will be established only where, through the relations of the parties, there is a clear intent to use an identifiable piece of property as security for a debt." *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 53; 503 NW2d 639 (1993). Nowhere does plaintiff claim that the property was intended as security for a debt owed to her. Therefore, the trial court properly granted summary disposition of this claim.

Finally, plaintiff argues that the trial court erred in dismissing her claim for exemplary damages. However, because all plaintiff's theories of recovery were appropriately dismissed, the trial court also properly dismissed her claim for exemplary damages.

Affirmed.

/s/ Peter D. O'Connell

/s/ William B. Murphy